

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
Region 21

TREE OF LIFE, INC. D/B/A GOURMET AWARD FOODS

Employer

and

Case 21-RC-20854

GENERAL TRUCK DRIVERS, OFFICE, FOOD &  
WAREHOUSE UNION, TEAMSTERS LOCAL 952,  
INTERNATIONAL BROTHERHOOD OF TEAMSTERS

Petitioner

SUPPLEMENTAL DECISION  
AND  
ORDER DIRECTING HEARING  
AND  
NOTICE OF HEARING

[\[1\]](#)

This Report contains my findings regarding the five  
determinative challenged ballots and the Employer's objections

[\[2\]](#)

to the election conducted on December 15 and 16, 2005. The  
Employer's objections allege 1) that the election was conducted  
in an improper voting unit; 2) Petitioner agents threatened,  
intimidated and coerced employees; and 3) Petitioner agents made  
objectionable promises to employees. As described below, I  
conclude that the challenged ballots cast by Frank Huizar and  
Mark Huizar shall be considered at a hearing, and herein Order  
and give Notice of such hearing.

## **Procedural History**

The tally of ballots served on the parties at the conclusion of the election showed that of approximately 91 eligible voters, 42 cast ballots for, and 40 against, the Petitioner. There were zero void ballots. There also were five challenged ballots, which are sufficient in number to affect the results of the election. The Employer timely filed objections to the conduct of the election, a copy of which is attached as Attachment A.

[\[3\]](#)

The Objections were timely served upon the Petitioner.

## **The Challenged Ballots**

During the election, the ballots of Margarita Quiñones and Adolfo Torres were challenged by the Employer's observer on the grounds that they were not employed by the Employer. Also during the election, the Board agent challenged the ballot cast by Max Martinez, because his name did not appear on the *Excelsior* list. Lastly, the ballots of Frank Huizar and Mark Huizar were challenged by the Petitioner's observer on the grounds that they are supervisors as defined in Section 2(11) of the Act and/or that they are related to a member of Employer management and, therefore, are not eligible to vote.

Subsequently, the parties entered into a stipulation, a copy of which is attached hereto as Attachment B, in which the parties agreed that Margarita Quiñones, Adolfo Torres and Max Martinez are not eligible voters in the above-captioned matter, inasmuch as they were not employed in the collective-bargaining unit through the dates of the election, and stipulated and agreed that the challenges to their ballots should be sustained.

Regarding the challenges to the ballots cast by Frank Huizar and Mark Huizar, the Employer contends that Frank Huizar is employed as a team leader in the Warehouse Receiving Department for the "put away" employees and Mark Huizar is employed as a team leader in the Warehouse Inventory Control Department. The Employer notes that the unit involved herein specifically includes, inter alia, warehouse leads and driver leads. The

Employer contends that Frank Huizar and Mark Huizar are employed as team leaders in the unit involved herein and do not possess or exercise any supervisory authority as defined in Section 2 (11) of the Act. The Employer further contends that both are paid hourly; and punch a time clock; but do not assign work to employees; do not attend management or supervisory meetings; have no responsibility over employees' timecards; do not have the authority to grant or deny leaves of absence; and do not evaluate the performance of other employees.

Specifically regarding Frank Huizar, the Employer contends that he spends 100 percent of his work time performing the exact same job duties as the other "put away" employees, such as moving product from the dock into the warehouse, repacking products into smaller containers, and putting away these smaller containers into the warehouse bins.

Regarding Mark Huizar, the Employer contends that he and the two other day shift Inventory Control employees all perform three basic functions: 1) perform cycle counts in the warehouse aisles where they check the counts of cases, the code dates on the products and make sure there is no infestation; 2) remove from inventory food items that have expired or are about to expire, before Mark Huizar contacts charity groups to offer donations of such items and coordinate the shipment of the donated items; and 3) perform audits of the day's receipts and significant adjustments to the inventory in the warehouse.

These tasks account for over 80 percent of Mark Huizar's work time. Less than 20 percent of Mark Huizar's work day is spent preparing the reports on cycle counts, inventory and calling charitable organizations for the donations of food. Mark Huizar determines on which aisles he and the two Inventory Control employees should perform the cycle counts, but the nature of such work does not vary between the aisles and the assignment of aisles is routine and does not require the use of independent judgment. Huizar and the two Inventory Control employees simply rotate the aisles they work on so they do not repeat the same aisles.

Regarding the Petitioner's assertion that Frank Huizar and Mark

Huizar are ineligible to vote because of their relationship with a member of Employer management, the Employer contends the only relationship Frank and Mark Huizar have with any member of management is that they are cousins of Warehouse Manager Andy Huizar. Andy Huizar does not hold an ownership interest in the Employer, and Mark Huizar and Frank Huizar have not received any special benefits based on their relationship to Andy Huizar. Further, Mark and Frank Huizar have a community of interest with all other unit employees inasmuch as they receive the same benefits as all other unit employees and they must follow the same policy and rules as all hourly employees.

Accordingly, the Employer contends that the challenges to the ballots of Frank Huizar and Mark Huizar should be overruled inasmuch as they are not statutory supervisors under Section 2 (11) of the Act, their status as cousins of a member of management at the facility is not sufficient to warrant the exclusion of their votes, and they share a community of interest with other unit employees.

For its part, the Petitioner simply contends that Frank Huizar and Mark Huizar are ineligible to vote for the same reasons that they were challenged at the election.

Upon consideration of the evidence presented and adduced by the investigation, I conclude that the challenges to the ballots cast by Frank Huizar and Mark Huizar raise substantial and material issues of fact that can be best resolved after a hearing.

### **The Objection and Analysis**

#### **Objection No. 1**

"The Employer objects to the election in this case because the election was held in an improper voting unit. The job categories of Customer Service Employees, Purchasing Employees and Merchandisers were excluded from the appropriate bargaining unit in this case

in error. As a result, the results of the election in this matter held on December 15-16, 2005 must be set aside and a new election must be scheduled that includes the job classifications of Customer Service Employees, Purchasing Employees and Merchandisers in the appropriate bargaining unit."

In support of Objection No. 1, the Employer has simply referenced the Decision and Direction of Election which issued in this matter on November 17, 2005.

A pre-election hearing was conducted in this matter on October 27, 2005. At hearing, the Employer did not dispute that the employees in the petitioned-for unit, as amended, are appropriately included, but did assert that merchandisers, hourly sales associates, customer service employees and purchasing employees must also be included because they share a sufficient community of interest with other unit employees. These issues were fully litigated, by both parties. In the Decision and Direction of Election, I found that the petitioned-for unit, as amended, is an appropriate unit and failed to find that the merchandisers, customer service employees, purchasing employees or hourly sales associates share a community of interest with the unit employees sufficient to require their inclusion in the appropriate unit. Accordingly, such job categories were excluded from the unit found appropriate in this matter.

By letter dated November 29, 2005, the Employer filed a Request for Review with the Board arguing that merchandisers, customer service employees, and purchasing employees should be appropriately included in the unit herein.

By Order dated December 14, 2005, the Board denied the Employer's Request for Review. Inasmuch as this matter has been fully litigated and definitively resolved, and inasmuch as this objection does not allege any conduct which interfered with the election, I conclude that Employer's Objection No. 1 shall be overruled in its entirety.

## **Conclusion**

In accordance with the investigation and the stipulation of the parties, I hereby sustain the challenges to the ballots of Margarita Quinones, Adolfo Torres and Max Martinez be sustained. This leaves unresolved the challenges to the ballots of Frank Huizar and Mark Huizar. With the tally of ballots showing 42 ballots cast for, and 40 against, the Petitioner, the challenged ballots cast by Frank Huizar and Mark Huizar, are still sufficient in number to affect the results of the election. I have concluded that the issues raised by the challenges to the ballots cast by Frank Huizar and Mark Huizar can best be resolved after a hearing. Accordingly, pursuant to Section 102.69 (d) of the Board's Rules and Regulations, Series 8, as amended, I shall direct a hearing on these challenged ballots. Further, I conclude that Employer's Objection No. 1 is [\[4\]](#) overruled in its entirety.

## **ORDER**

IT IS HEREBY ORDERED that a hearing be held before a duly designated Hearing Officer for the purpose of receiving evidence to resolve the issues raised by the challenges to the ballots cast by Frank Huizar and Mark Huizar.

IT IS FURTHER ORDERED that the Hearing Officer designated for the purpose of conducting such hearing shall prepare and cause to be served upon the parties a report containing the resolution of the credibility of witnesses, findings of fact, and recommendations to the Board as to the disposition of the challenges to the ballots cast by Frank Huizar and Mark Huizar. The provisions of Section 102.69 of the above Rules shall govern with respect to the filing of exceptions or an answering brief on the exceptions to the [\[5\]](#) Hearing Officer's report.

## **NOTICE OF HEARING**

PLEASE TAKE NOTICE that, on July 5, 2006, **and such consecutive days thereafter until concluded**, at 9 a.m., PDT, in Hearing Room 903, Ninth Floor, 888 South Figueroa Street, Los Angeles, California, a hearing be conducted for the purposes set forth in the above Order, at which time and place the parties will have the opportunity to appear in person, or otherwise, and give testimony.

Dated at Los Angeles, California on June 20, 2006.

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Victoria E. Aguayo  
Regional Director  
Region 21  
National Labor Relations Board

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[\[1\]](#)

This report has been prepared under Section 102.69 of the Board's Rules and Regulations, Series 8, as amended.

[\[2\]](#)

The collective-bargaining unit found appropriate in this matter is composed of: "All full-time and regular part-time drivers, warehouse employees, warehouse clerical employees, sanitation employees, warehouse leads and driver leads employed by the Employer at its facility located at 5560 East Slauson Avenue, Los Angeles, California; excluding all other employees, merchandisers, hourly sales associates, customer service employees, purchasing employees, commissioned sales associates, office clerical employees, guards and supervisors as defined in the Act."

[\[3\]](#)

By letter dated January 6, 2006, the Employer, with my approval, withdrew Objections Nos. 2 and 3.

[\[4\]](#)

Under the provisions of section 102.69 of the Board's Rules and Regulations, exceptions to this report may be filed with the Board in Washington, DC 20570. Exceptions must be received by the Board in Washington by July 5, 2006.

Under the provisions of Section 102.69(g) of the Board's Rules, documentary

evidence, including affidavits, which a party has timely submitted to the Regional Director in support of its objections or challenges and which are not included in the report, are not part of the record before the Board unless appended to the exceptions or opposition thereto which the party files with the Board. Failure to append to the submission to the Board copies of evidence timely submitted to the Regional Director and not included in the report shall preclude a party from relying upon the evidence in any subsequent related unfair labor practice proceedings.

[\[5\]](#)

This direction of hearing is subject to special permission to appeal in accordance with Section 102.69(i)(1) and Section 102.64 of the Board's Rules and Regulations, Series 8, as amended.